

(2) For manufacturers with four or more engine families, EPA may identify a number of engine families that is no greater than twenty-five percent of the number of engine families to which this subpart is applicable that are produced by the manufacturer in that model year.

(b) For each engine family identified by EPA, engine manufacturers shall perform emission testing of an appropriate sample of in-use engines from each engine family. Manufacturers shall submit data from this in-use testing to EPA.

(c) *Number of engines to be tested.* An engine manufacturer shall test in-use engines from each engine family identified by EPA. Engines to be tested shall have accumulated between half and three-quarters of the family's useful life. The number of engines to be tested by a manufacturer will be determined by the following method:

(1) A minimum of four (4) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(2) For engine families of less than 500 engines for the identified model year or for engine manufacturers who make less than or equal to 2,000 for that model year, a minimum of two (2) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(3) If an engine family was certified using carry over emission data and has been previously tested under paragraph (c) (1) or (2) of this section (and EPA has not ordered a recall for that family), then only one engine for that family must be tested. If that one engine fails any pollutant, testing must be conducted as outlined at paragraph (c) (1) or (2) of this section, whichever is appropriate.

(d) At the discretion of the Administrator, an engine manufacturer may test more engines than the minima described in paragraph (c) of this section or may concede failure before testing a total of ten (10) engines.

(e) The Administrator will consider failure rates, average emission levels

and the existence of any defects among other factors in determining whether to pursue remedial action under this subpart. The Administrator may order a recall pursuant to §§ 91.807-91.814 before testing reaches the tenth engine.

(f) The Administrator may approve an alternative to manufacturer in-use testing, where:

(1) Engine family production is less than or equal to 200 per year; or

(2) Engines cannot be obtained for testing because they are used substantially in craft which are not conducive to engine removal such as large vessels where the engine can not be removed without dismantling either the engine or the vessel; or

(3) Other compelling circumstances associated with the structure of the industry and uniqueness of marine engine applications. Such alternatives shall be designed to determine whether the engine family is in compliance in-use.

(g) *Collection of in-use engines.* The engine manufacturer shall procure in-use engines which have been operated for between half and three-quarters of the engine's useful life. The engine manufacturer may test engines from more than one model year in a given year. The manufacturer shall begin testing within twelve calendar months after receiving notice that EPA has identified a particular engine family for testing and shall complete testing of such engine family within twelve calendar months from the start of such testing. Test engines may be procured from sources associated with the engine manufacturer (i.e., manufacturer established fleet engines, etc.) or from sources not associated with the manufacturer (i.e., consumer-owned engines, independently-owned fleet engines, etc.).

[61 FR 52102, Oct. 4, 1996, as amended at 67 FR 68340, Nov. 8, 2002]

#### **§ 91.804 Maintenance, procurement and testing of in-use engines.**

(a) A test engine must have a maintenance and use history representative of actual in-use conditions.

(1) To comply with this requirement a manufacturer must obtain information from the end users regarding the

## **§ 91.805**

accumulated usage, maintenance, operating conditions, and storage of the test engines.

(2) Documents used in the procurement process must be maintained as required in § 91.121.

(b) The manufacturer may perform minimal set-to-spec maintenance on components of a test engine that are not subject to parameter adjustment. Maintenance may include only that which is listed in the owner's instructions for engines with the amount of service and age of the acquired test engine. Documentation of all maintenance and adjustments shall be maintained and retained as required by § 91.121.

(c) At least one valid emission test, according to the test procedure outlined in subpart E of this part, is required for each in-use engine.

(d) The Administrator may waive portions or requirements of the test procedure, if any, that are not necessary to determine in-use compliance.

(e) If a selected in-use engine fails to comply with any applicable emission standards, the manufacturer shall determine the reason for noncompliance. The manufacturer must report all such reasons of noncompliance within fifteen days of completion of testing.

### **§ 91.805 In-use test program reporting requirements.**

(a) The manufacturer shall electronically submit to the Administrator within three (3) months of completion of testing all emission testing results generated from the in-use testing program. The following information must be reported for each test engine:

- (1) Engine family,
- (2) Model,
- (3) Engine serial number,
- (4) Date of manufacture,
- (5) Estimated hours of use,
- (6) Date and time of each test attempt,
- (7) Results (if any) of each test attempt,
- (8) Results of all emission testing,
- (9) Summary of all maintenance and/or adjustments performed,
- (10) Summary of all modifications and/or repairs,
- (11) Determinations of noncompliance.

## **40 CFR Ch. I (7–1–10 Edition)**

(b) The manufacturer must electronically submit the results of its in-use testing with a pre-approved information heading. The Administrator may exempt manufacturers from this requirement upon written request with supporting justification.

(c) All testing reports and requests for approvals made under this subpart shall be addressed to: Manager, Engine Compliance Programs Group 6403–J, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(d) The Administrator may approve and/or require modifications to a manufacturer's in-use testing programs.

### **§ 91.806 Voluntary emissions recall.**

(a) Prior to an EPA ordered recall, the manufacturer may perform a voluntary emissions recall pursuant to regulations at § 91.904 of this part. Such manufacturer is subject to the reporting requirements at § 91.905 of this part.

(b) Once EPA determines that a substantial number of engines fail to conform with the requirements of section 213 of the Act or this part, the manufacturer will not have the option of a voluntary emissions recall.

## **Subpart J—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program**

### **§ 91.901 Applicability.**

The requirements of this subpart J are applicable to all marine engines subject to the provisions of subpart A of this part 91. The requirement to report emission-related defects affecting a given class or category of engines remains applicable for five years from the end of the model year in which such engines were manufactured.

### **§ 91.902 Definitions.**

The definitions in subpart A of this part apply to this subpart.

### **§ 91.903 Applicability to part 85, subpart T.**

(a) Marine SI engines subject to provisions of subpart A of this part are subject to emission defect reporting requirements specified in 40 CFR Part 85,